

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

COURT OF APPEALS FOR THE FIFTH CIRCUIT.

NO. 994 145

**THE STEAMER "PEDRO," SEBASTIAN BONET V. -
APPELLANT.**

THE UNITED STATES.

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
THE SOUTHERN DIVISION OF FLORIDA.**

FILED AUGUST 28, 1906.

(16,957.)

(16,957.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 372.

THE STEAMER "PEDRO;" SEBASTIAN BONET, CLAIMANT,
APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

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1 In the District Court of the United States, Southern District
of Florida.

UNITED STATES OF AMERICA
vs.
STR. PEDRO AND CARGO. } Prize.

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida:

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the steam vessel Pedro in a cause of prize, alleges:

That, pursuant to instructions from the President of the United States, French E. Chadwick, of the United States Navy, in and with the United States ship of war the New York, her officers and crew, did on the 22 day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said steam vessel Pedro and her cargo, — have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court be duly notified of the allegations and prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that, on proper proofs being taken and heard and all due proceedings being had, the said Pedro, together with her tackle, apparel, furniture, and cargo, may on the final hearing of this cause, by the definitive sentence and decree of this court, be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

(S'd)

J. N. STRIPLING,
U. S. Attorney, S. D. of Florida.

Let attachment and motion issue as prayed, returnable 9th day of May, 1898, A. D., at 10.30 a. m.

Entered as of course.

(S'd)

E. O. LOCKE, *Clerk,*
By J. OTTO, *D'y Clerk.*

Endorsed: Filed April 23d, 1898. (S'd) E. O. Locke, clerk.

2 THE STEAMER "PEDRO," ETC., VS. THE UNITED STATES.

2 UNITED STATES OF AMERICA:

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

You are hereby commanded forthwith to attach, seize, and take into your custody the Spanish steamer Pedro, her tackle, apparel, furniture, cargo, &c., wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize.

And how you shall have executed this precept make known to the said court, at the court-rooms, in Key West, the 9th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof with your certificate of execution hereon written.

[SEAL.] Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 23rd day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-second.

(S'd)
(S'd)

E. O. LOCKE, *Clerk,*
By J. OTTO, *D'y Clerk.*

Endorsed : Filed April 24th, 1898. (S'd) E. O. Locke, clerk.

Received the within writ of attachment April 23rd, 1898, and executed it on the same day, as within commanded, by attaching and taking in custody the Spanish steamer Pedro.

(S'd)
(S'd)

JOHN F. HORR,
U. S. Marshal,
By ALFRED ATCHISON,
D'y U. S. Marshal.

3 UNITED STATES OF AMERICA:

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

Whereas on the 23 day of April, A. D. 1898, the United States of America, by their proctor, Joseph N. Stripling, Esq., filed in the office of the clerk of said court his libel against the Spanish str. Pedro in a cause of prize of war, alleging in substance that she was captured by the U. S. flagship New York April 22nd, 1898, as a prize of war.

Wherefore the said libellant pray- that the usual process of attachment may issue against the said Spanish str. Pedro; that monition may issue, citing all parties having or claiming any interest or property in said Sp. str. Pedro to appear and answer upon oath all and singular the matters aforesaid, and that this court will be pleased

to decree to the libellant proceeds of said vessel for services in said cause, and that the said str. Pedro may be condemned and sold to pay said prize money, with costs, charges, and expenses, and that the libellant may have such other and further relief in the premises as in law and justice *he* may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Monday, the 9th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said str. Pedro to appear at an admiralty session of said court, to be held in the court-rooms of said court, at Key West, in said district, on Monday, the 9 day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof, and by posting two such other copies in the most public places of Key West, & be published in the K. W. Advertiser once a week for two weeks.

And how you shall have executed this precept make known to this court by a return hereof on or before the 9th day of May aforesaid, with your certificate of execution hereon written.

Witness the Hon. James W. Locke, judge of said court, at Key West, in said district, this 23 day of April, in the year [SEAL.] of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the hundred and twenty-second.

A true copy.

Attest:

(S'd)

(S'd)

E. O. LOCKE, *Clerk,*
By J. OTTO, *D'y Clerk.*

Endorsed: Filed April 24th, 1898. (S'd) E. O. Locke, clerk.

Received the within writ of monition April 23rd, 1898, and duly executed it on the same day by reading a copy to the master of the Spanish steamer Pedro and posting two copies, as within commanded.

(S'd)

JOHN F. HORN,

U. S. Marshal,

(S'd)

By ALFRED ATCHISON,
D'y U. S. Marshal.

4 (*Claim of Master of Pedro.*)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA
against
 THE STEAMER PEDRO & HER CARGO. } In Prize.

And now comes Sebastian Bonet, master, and as such the lawful bailee of the steamer Pedro, and, intervening as such bailee for the interests of the owners of the said steamer, according to the annexed test affidavit, appears before this honorable court and makes claim to the said steamer, her engines, etc., as the same are attached by the marshal, under process of this court, at the instance of the United States of America, under a libel against said steamer, her cargo, etc., as prize of war, and he avers that the said steamer was not and is not lawful prize, and he prays on behalf of the owners of the said steamer, for and in behalf of whom he is duly authorized to make this claim, to be permitted to defend accordingly, and to show cause, pursuant to the terms of the monition herein issued and served upon the said steamship and upon the said master, as bailee, why the said steamship, her engines, etc., were not liable to be treated as enemy's property at the time and place and under the circumstances of the alleged capture, and why she should not be condemned as lawful prize of war, but should be restored, with damages and costs.

(S'd)

S. BONET.

WILHELMUS MYNDERSE AND
 G. BOWNE PATTERSON, *Proctors.*

Sworn to before me this May 23rd, 1898.

(S'd)

J. OTTO, *D'y Clerk.*

Endorsed: Filed May 23rd, 1898. (S'd) E. O. Locke, clerk.

5

(Test Affidavit.)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA
against
 THE STEAMER PEDRO & HER CARGO. } Test Affidavit.

COUNTY OF MONROE,
State of Florida, Southern District of Florida, } ss:

Sebastian Bonet, being duly sworn, deposes and says that he is a citizen of the Kingdom of Spain; that his home is in Majorca, in the Balearic islands, and that he is master of the steamer Pedro, proceeded against in this action, and has been master of said steamer for nine years last past.

Deponent further says that the steamer Pedro was built in Newcastle, England, in 1883, and until 1889 was known as the English steamer Lilburn Tower, at which time her register was transferred from England to Spain, and she has since carried the flag of Spain and has sailed from the port of Bilboa, Spain, where she has been registered in the name of Compania la Flecha, but has at all times been under the management of the house of G. H. Fletcher & Company, of Liverpool, England.

Deponent, upon information and belief, such information having been acquired by communications from England since the examination of deponent *in preparatorio*, further says that the Compania la Flecha is, as he is informed and believes, a corporation organized and existing under and pursuant to the laws of the Kingdom of Spain, the capital being divided into 1,000 shares, of which 200

shares are registered in the names of William Rudolph
6 Peter Jackson, a member of the copartnership firm of G. H.

Fletcher & Company, of Liverpool, England ; 200 shares in the name of Thomas Hughes Jackson, of Liverpool, England ; 200 shares in the name of Jose Serra y Font, of Barcelona, Spain ; 200 shares in the name of Raimundo Real de Assua, of Bilboa, Spain, and 200 shares in the name of Ramon Real y Assua, Bilboa, Spain, the said William Rudolph Peter Jackson and Thomas Hughes Jackson being domiciled in England and subjects of the United Kingdom of Great Britain and Ireland, and the said Jose Serra y Font, Raimundo Real de Assua, and Ramon Real de Assua being domiciled in Spain and subjects of the Kingdom of Spain ; that while the shares of Compania la Flecha have been registered as aforesaid such registration has been merely formal, and the certificates of shares, the possession of which under the constitution of the said company establishes the ownership thereof, have been for many years last past possessed by the said Thomas Hughes Jackson, who has been and still is the true and lawful owner of all of the said 1,000 shares for value and thereby the sole beneficial owner of the said steamer Pedro.

Deponent further states, upon like information and belief and by due authority of the said Thomas Hughes Jackson, that the said steamer has been sailed under the Spanish flag purely and solely for commercial reasons, her trade lying regularly in the line of Europe, Cuba, and the United States, and there being discriminations in favor of vessels carrying the Spanish flag in respect of commerce with the colonies of Spain in consideration of dues paid by such steamers to the government of Spain, and that it has been the

7 purpose and intent of the owner of the Pedro to maintain her in such trade only so long as such trade might be lawfully and peacefully carried on, and to withdraw her from the Spanish registry and from under the Spanish flag and restore her to British registry and the flag of Great Britain whenever such trade should be disturbed ; that it had been and is his purpose to make such transfer because of the pending war between the United States and the Kingdom of Spain, but that no opportunity therefor

has been afforded, the steamer having been captured prior to an outbreak of hostilities and before any state of war was known.

Deponent further says that the Pedro has during the nine years that he has known her been engaged in the transportation of cargo for hire as a merchant vessel under the management of the said house of G. H. Fletcher & Company, of Liverpool. Her voyages have begun in Europe, where she has taken such cargo as was procurable for Cuban ports, from which ports, upon discharge of such cargo, she has proceeded to ports of the United States, where she has taken cargo for port of final destination in Europe, either under charter or on the berth, such cargo from the United States being the principal cargo of the round voyage, and the round voyage occupying about three months and she making in regular course about four voyages a year.

Deponent further says that said steamer Pedro has a cargo capacity of about 5,000 tons, or 4,000 dead weight, her net register being 1,618 tons and her gross register 2,800 tons; that between March 20th and March 25th, 1898, she took on board, at Antwerp, Belgium, about 2,000 tons of cargo for Havana, Santiago de Cuba, and Cienfuegos, Cuba, of which 1,700 tons was rice and the remaining portion was hardware, empty bottles, paper, cement, and general cargo. On

the 25th of March, 1898, the Pedro sailed from Antwerp,
8 bound for Pensacola, Florida, via Havana, Santiago de Cuba,
and Cienfuegos, Cuba, she then being under charter to the
firm of W. S. Keyser & Company, of Pensacola, to pro-
(sic) ceed to Pensacola to proceed to Pensacola and / or Ship island,
and thence to take a cargo of lumber to Rotterdam or
Antwerp. A copy of said charter is hereto annexed, marked "A,"
and deponent prays that reference be made thereto. Such copy
was produced by deponent at his examination *in preparatorio*, but
he does not know whether the same was recorded by the prize
commissioners in such depositions *in preparatorio*.

Deponent further says that the Pedro on sailing from Europe had less than half a full cargo, and that the entire freight list of her cargo transported for delivery in Cuba did not exceed \$7,000 in money of the United States, and that such sum was not more than sufficient to bear the expenses of receiving, transporting, and delivering such cargo and offered no inducement to bring the vessel across the Atlantic, the sole inducement being the large freight upon the full cargo of lumber to be carried under the aforesaid charter-party, the hire or freight upon which would have been about \$25,000.

The said steamer arrived in Havana on April 17th, 1898, and there discharged about 1,600 tons of her cargo, and on April 22 departed thence for Santiago de Cuba, having taken on board at Havana, on April 20, about twenty tons of general cargo from the steamer Alava, which the said steamer Alava had brought from European ports and desired to tranship to Santiago de Cuba, the same having never been landed in Cuba.

Deponent further says that the said steamer Pedro left Havana for Santiago de Cuba about half after three o'clock in the afternoon of

9 April 22d, 1898, and that he sailed thence ignorant of any state of war between the United States and the Kingdom of Spain and without any notice thereof, and before the outbreak of hostilities between the two nations, and that he did not then or at any time from leaving Antwerp have on board any officers in the military or naval service of the Kingdom of Spain, or any coal except such as was necessary for his voyage, or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

Deponent further says upon information and belief that at about noon of April 22 an American steamer, then lying in the port of Havana left said port, bound for the United States of America, without hinderance from the Spanish authorities and with their usual permission, and that later in the day, and at about six o'clock, another American steamer, the Saratoga, of New York, then lying in said port of Havana, sailed from said port for the United States of America without hinderance from the Spanish authorities and with their usual permission.

Deponent further says that he proceeded upon his voyage until about six o'clock in the afternoon of said April 22, at which time, being then distant about twelve miles easterly from the entrance to Havana harbor, the day being bright and he being without notice of any blockade of the said port of Havana by the United States of America, and being in entire ignorance of said blockade or of any state of war, was fired upon by the United States cruiser New York, and his steamer, Pedro, entirely without resistance on her part, was captured with her cargo by said cruiser New York and was sent into this port of Key West, where they have been libeled as prize of war.

Deponent further says that he is informed and believes that by the existing policy of the Government of the United States of America, as evidenced by repeated declarations of its executive 10 and by the proclamation of the President of the United States issued and published April 26, 1898, as well as upon principles in harmony with the present views of nations and sanctioned by recent practice, in accordance with which the President of the United States had directed that the war shall be conducted, the said steamer Pedro was not at the time and place and under the circumstances of her seizure liable to be treated as enemy's property, but, on the contrary, having sailed from a foreign port prior to April 21, 1898, and being bound for a port of the United States, was exempt from capture. A copy of said proclamation is hereto annexed, marked "B," and deponent prays that reference may be made thereto.

Deponent further says that since giving his deposition *in preparatio* he has been informed and believes that his said steamer was at the time of capture and now is insured against all perils and adventures, including the risks of war, for her full value by underwriters of Lloyds, London, and by insurance companies organized and existing under and pursuant to the laws of Great Britain, and that if the said vessel should be condemned as prize by this court

8 THE STEAMER "PEDRO," ETC., VS. THE UNITED STATES.

the loss will rest upon and be borne by the said English under-wariters, at whose request and by whose authority deponent represents these facts respecting her insurance to the court.

(S'd)

S. BONET.

Sworn to before me this 23rd day of May, 1898.

(S'd)

J. OTTO, D'y Clerk.

Endorsed: Filed May 23rd, 1898. (S'd) E. O. Locke, clerk.

11

(*Claim of Edward Twigge.*)

I, Edward Twigge, of 25 Castle street, Liverpool, England, merchant, carrying on business *on business* at the same place without a partner, under the style or firm of "Twigge & Crosfield," do solemnly and sincerely declare and make oath as follows:

1st. On the 23d day of March, one thousand eight hundred and ninety-eight, I shipped 1,000 bags, each containing two hundred-

H. C.

weight net of cleaned Saigon rice, marked Cienfuegos, from Antwerp, in the Kingdom of Belgium, in the steamship Pedro, of the Flecha line of Spanish steamers, to Messrs. Hartasanchez, Cardona & Co., of Cienfuegos, Cuba, the freight in respect of the same having been paid by me in Antwerp aforesaid prior to the sailing of the said steamship. The five bills of lading attached to this my declaration refer solely to the said 1,000 bags of rice.

2d. The said steamship Pedro was, as I am informed and verily believe, captured off Havana on the 23d of April, 1898, by the United States cruiser New York, before the ultimatum which had been issued by the United States of America to the Kingdom of Spain had expired and before war with that country had been formally declared.

3d. The whole of the said rice was, as I verily believe, on board the said steamship Pedro at the time of her said capture, and is now, as I verily believe, in the possession or control of the United States of America.

4th. The said rice was not insured against war risks, being shipped on the 23d day of March, 1898, before the said ultimatum and declaration of war.

12 5th. The said rice was consigned to the said Messrs. Hartasanchez, Cardona & Co., and I have not received any payment for or in respect of the said rice or any part thereof from any person or persons or company or companies whatsoever.

6th. Under the circumstances aforesaid I respectfully claim delivery of the said rice to myself or my order, and I make this solemn declaration, conscientiously believing the same to be true.

(S'd)

EDWARD TWIGGE.

J. B.

Subscribed and sworn to at the city of Liverpool, in England, this 4th day of May, 1898, before me—

(S'd)

[SEAL.]

JAMES BOYLE,
Consul of the United States, Liverpool, England.

Endorsed : Filed May 19th, 1898. (S'd) E. O. Locke, clerk.

(*Claim of Edward Twigge.*)

District Court of the United States, Southern District of Florida.
In Admiralty.

THE UNITED STATES
vs.
THE STEAMSHIP PEDRO & CARGO. } Prize.

To the Hon. James W. Locke, judge of said court:

And now comes Edward Twigge, by W. J. H. Taylor, his
13 agent and attorney-in-fact, and says he is a British subject and
a merchant doing business in the city of Liverpool, England,
and he claims 1,000 bags of rice, marked H. C., Cienfuegos, being a
part of the cargo of the steamship Pedro, and he says he is the
owner thereof.

And he denies that the said 1,000 bags of rice, part of the cargo
of the said steamship Pedro, are lawful prize of war, as alleged and
set forth in the libel exhibited and filed in this cause.

Wherefore he prays restitution of the said 1,000 bags of rice.

(S'd) EDWARD TWIGGE,
By his attorney-in-fact, W. J. H. TAYLOR.

Sworn to and subscribed before — this 19th day of May, A. D.
1898.

(S'd)
[SEAL.]

G. BOWNE PATTERSON,
Notary Public.

273.

UNITED STATES CONSULATE, LIVERPOOL.

I, the undersigned, consul of the United States of America for the
port of Liverpool and its dependencies, *ex officio* notary public, do
certify and make known to whom these presents shall come that on
the date hereof before me personally appeared Edward Twigge,
known to me to be the person described in and who executed the
annexed instrument, and acknowledged the same to be his act and
deed, and declared that he had executed the same freely and vol-
untarily to the uses and for the purposes therein mentioned.

Given under my hand and seal of office, at Liverpool, this 4th
day of May and year of our Lord one thousand eight hundred
14 and ninety-eight.

(S'd)

JAMES BOYLE,
U. S. Consul, ex Officio Notary Public.

To all to whom these presents shall come, I, Edward Twigge, of 25
Castle street, Liverpool, England, merchant, carrying on business
at the same place, without a partner, under the style or firm of
Twigge & Crosfeld, send greeting :

Whereas, on the 23rd day of March, 1898, I, the said Edward
Twigge, shipped 1,000 bags, each containing two hundredweight

net, of cleaned Saigon rice, marked H. C. Cienfuegos, from Antwerp, in the Kingdom of Belgium, in the steamship Pedro, of the Flecha line of Spanish steamers, to Messrs. Hartasanchez, Cardona & Co., of Cienfuegos, Cuba; and whereas the said steamship Pedro was captured off Havana on the 23rd day of April, 1898, by the United States cruiser New York, before the ultimatum which had been issued by the United States of America to the Kingdom of Spain had expired and before war with that country had been formally declared; and whereas the whole of the said rice was on board the said steamship Pedro at the time of her said capture and is now in the possession or control of the United States of America; and whereas I, the said Edward Twigge, claim delivery of the said 1,000 bags of rice, and have this day made and sent to the proper authorities a declaration showing my title to the said rice: Now know all men by these presents that I hereby appoint W. J. H. Taylor, at Key West, in the said United States of America, and the British consul or British vice-consul for the time being at Key West aforesaid, and each of the to be my true and lawful attorneys or attorney for the purposes hereinafter expressed—that

15 is to say, for me and on my behalf to ask, demand, sue for, recover, and receive the said 1,000 bags of rice or the value thereof, and on transfer or delivery thereof or payment of the value thereof or any part thereof respectively to give, sign, and execute receipts, releases, and other discharges for the same respectively; also to state, settle, adjust, compound, submit to arbitration and compromise all actions, suits, accounts, reckonings, claims, and demands whatsoever which are now or hereafter shall or may be depending between me and the said United States of America or any person or persons whomsoever for or in respect of the said rice or the value thereof or any part thereof respectively, and to do, execute, and perform any other act, matter, or thing whatsoever which ought to be done, executed, or performed, or which in the opinion of my said attorneys or attorney ought to be done, executed, and performed in or about the premises aforesaid as fully and effectually to all intents and purposes as I myself could do if I were present, as witness my hand and seal this 4th day of May, 1898.

(S'd)

EDWARD TWIGGE.

Signed, sealed, and delivered by the said Edward Twigge in the presence of—

WM. PIERCE AND
S. McCREADY.

Endorsed: Filed May 19th, 1898. (S'd) E. O. Locke, clerk.

Op. II

THE STEAMER "PEDRO," ETC., VS. THE UNITED STATES.

16

(*Claim of Carl George Heise.*)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA
against
THE STEAMER PEDRO & HER CARGO. } Prize.

Carl George Heise, of Hamburg, Germany, claims 2,500 bags of rice, of which 150 are marked H, 150 are marked H, 200 are DD EE
marked H, 200 are marked H, 200 are marked H, 100 are marked H,
GG O P M
150 are marked H, 150 are marked H. K., 150 are marked H, 200 S R
are marked H. L., 200 are marked H. F., 150 are marked H A, 150 are marked H. J., 150 are marked H B, and 200 are marked H C, as the true and lawful owner thereof, the same now being proceeded against in the above-entitled action, and the same not being lawful prize of war.

(S'd) CARL GEORGE HEISE,
By WILHELMUS MYNDERSE AND
G. BOWNE PATTERSON,
His Proctors.

Sworn to before me this May 23rd, 1898.

(S'd) J. OTTO, *D'y Clerk.*

WILHELMUS MYNDERSE AND
G. BOWNE PATTERSON, *Proctors.*

Endorsed: Filed May 23rd, 1898. (S'd) E. O. Locke, clerk.

(*Test Affidavit.*)

17 District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA
against
THE STEAMER PEDRO & HER CARGO. }

COUNTY OF MONROE, STATE OF FLORIDA, } ss:
Southern District of Florida,

William H. Fain, being duly sworn, deposes and says that he is a resident of the city of New York and a citizen of the United States of America.

Deponent further says that he is specially authorized by Carl George Heise, of Hamburg, Germany, claimant of 2,500 bags of rice, of which 150 are marked H/DD, 150 are marked H/EE, 200 are

marked H/GG, 200 are marked H/O, 200 are marked H/P, 100 are marked H/M, 150 are marked H/S, 150 are marked H K, 150 are marked H/R, 200 are marked H L, 200 are marked H F, 150 are marked H A, 150 are marked H J, 150 are marked H B, and 200 are marked H C, shipped on the steamer Pedro, to make claim therefor on his behalf.

Deponent further says upon information and belief that the said Carl George Heise is domiciled in Hamburg, Germany, and is a subject of the Empire of Germany.

Deponent further says upon information and belief that on or about the March 20th, 1898, the said steamer Pedro then being in Antwerp, Belgium, bound on a voyage to Havana, Santiago de Cuba, Cienfuegos, Cuba, and Pensacola, Florida, the said Carl George Heise shipped or caused to be shipped on her 2,500 bags of rice, marked as aforesaid, to be transported to the said port of Cienfuegos, and there to be delivered to the order of the shipper, according to the conditions of certain bills of lading issued therefor by said steamer to the said Carl George Heise.

Deponent further says upon information and belief that the said 18 2,500 bags of rice were shipped for account of said Carl George Heise for sale in Cienfuegos, Cuba, and that the said Carl George Heise was then, ever since has been, and still is the true and lawful owner of the said 2,500 bags of rice, and that he has received no payments or advances or loans from any person or persons thereon, and has made no drafts upon the security of the said rice or said bills of lading, but is still the owner and holder of the said bills of lading and the true and lawful owner of the rice therein referred to.

Deponent further says that thereafter and on or about the 25th day of March, 1898, the Pedro sailed from Antwerp, Belgium, with said rice on board and proceeded on her voyage, and subsequently and on or about the 22nd day of April, 1898, while proceeding out from the port of Havana, and while in ignorance and without notice of any blockade of the said port of Havana and in ignorance of and without notice of any state of war between the United States and the Kingdom of Spain, was, with said cargo, captured by the United States cruiser New York and taken into Key West, where she and her cargo have been libeled as prize of war, though such capture was, as deponent is informed and believes, without due warrant or authority.

Deponent further says that said cargo was not and is not contraband.

Deponent further says that this affidavit is made by him 19 upon information transmitted by cablegram, and that it is necessarily incomplete, and he prays leave, therefore, to supplement the same hereafter, as justice may require.

Wherefore claim is made on behalf of said Carl George Heise, of Hamburg, Germany, to the aforesaid shipment of 2,500 bags of rice, and it is averred on his behalf that the claimant has been the owner of said 2,500 bags of rice from the time of the shipment thereof, and that the said shipment is not and never has been the subject of

lawful prize, and it is prayed that the same may be restored to the claimant.

(S'd)

WM. H. FAIN.

Sworn to before me this 23rd day of May, 1898.

(S'd)

J. OTTO, D'y Clerk.

Endorsed: Filed May 23rd, 1898. (S'd) E. O. Locke, clerk.

(Notice for Further Proof and Order Denying the Same.)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA
against
 THE STEAMER PEDRO & HER CARGO. } In Prize.

And now comes Sebastian Bonet, master, claimant herein, and upon his test affidavit, herewith filed, and upon all other proceedings in the cause asks leave to take further or additional proofs respecting the matters set forth in the said test affidavit.

20 (S'd)

S. BONET.

Key West, May 27th, 1898.

WILHELMUS MYNDERSE AND
 G. BOWNE PATTERSON, *Proctors.*

Upon consideration, the above motion is denied.

Dated Key West, May 27th, 1898.

(S'd)

JAMES W. LOCKE,
U. S. District Judge.

Endorsed: Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

(Decree.)

In the District Court of the United States, Southern District of Florida.

UNITED STATES
against
 SPANISH STEAMER PEDRO AND CARGO. } Prize.

This cause coming on to be heard upon the allegations of the libel's, the claims of the master, and the several parties of the cargo of said vessel, and it appearing that the vessel was enemy's property and did not come within the exemption of the proclamation of the President of the United States, and that she is subject to condemnation and forfeiture—

It is ordered that as such enemy's property she be condemned and forfeited to the United States as a legal prize of war, and that 21 the marshal proceed to advertise and sell said vessel and deposit the proceeds thereof according to law.

THE STEAMER "PEDRO," ETC., VS. THE UNITED STATES.

It further appearing that the claims of the cargo do not fully prove the ownership of said cargo, it is ordered that the claimants herein have sixty days in which to make further proof.

Key West, Florida, May 27th, 1898.

(S'd)

JAMES W. LOCKE, Judge.

Endorsed : Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

(Assignment of Errors.)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA, Libellants & Appellees,
against
THE STEAMER PEDRO AND HER CARGO; SEBASTIAN BONET, Claim-
ant & Appellant.

And now the above-named claimant and appellant comes and makes assignment of error in respect of the decision and decree of the said district court:

First. In that the said district court held that the said steamer Pedro was lawful prize of war.

Second. In that the said district court did not hold that the said steamer Pedro was not lawful prize of war.

Third. In that the said district court did not hold that the said steamer Pedro was privileged and exempt from capture and condemnation as being property owned by neutrals.

22 Fourth. In that the said district court did not hold that the said steamer Pedro was privileged and exempt from capture and condemnation under the fourth article or paragraph of the proclamation issued by the President of the United States of America under date of April 26, 1898, and referred to in the test affidavit of the claimant.

Fifth. In that the said district court did not hold that the said steamer Pedro was privileged and exempt from capture and condemnation under the fifth article or paragraph of the said proclamation.

Sixth. In that the said district court did not hold that the said steamer Pedro was privileged and exempt from capture and condemnation under the other provisions of the said proclamation.

Seventh. In that the said district court did not hold and refused to hold that the said steamer Pedro had, prior to April 21, 1898, sailed from a foreign port bound to a port or place in the United States.

Eight. In that the said district court did not authorize, allow, and order further and additional proofs respecting the matters set forth in the claimant's test affidavit or in respect of any of the matters therein set forth.

(S'd)

WILHELMUS MYNDERSE AND
G. BOWNE PATTERSON,
Proctors for Claimant.

U.S.A.

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THE STEAMER "PEDRO," ETC., VS. THE UNITED STATES.

Endorsed: Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

23

(Petition of Appeal and Order.)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA, Libellants & Appellees,
against
THE STEAMER PEDRO AND HER CARGO; SEBASTIAN BONET, }
Claimant & Appellant.

And now Sebastian Bonet, claimant, considering himself aggrieved by the decision and decree of condemnation herein, and alleging error in the said decree, appears in open court and appeals therefrom to the Supreme Court of the United States. He presents here-with an assignment of the errors complained of and a bond for costs, with surety, in the sum directed by the court, and thereupon prays that his said appeal may be allowed, and that the record, includ-ing the ship's papers used upon the trial, his test affidavit, and all other proceedings, may be duly certified to the Supreme Court of the United States in accordance with the rules and practice for such cases made and provided, to the end that the said appeal may be heard and determined by the said Supreme Court of the United States.

S. BONET.

(S'd)

WILHELMUS MYNDERSE AND
G. BOWNE PATTERSON,
Proctors for Claimant.

Upon reading and filing the foregoing notice and prayer of appeal and the assignment of errors and bond upon appeal, the appeal of the claimant, Sebastian Bonet, is hereby allowed.

Key West, May 28th, 1898.

(S'd)

JAMES W. LOCKE,
*District Judge of the United States for the
Southern District of Florida.*

24 Endorsed: Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(Bond.)

United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA, }
against
THE STEAMER PEDRO & HER CARGO. }

Know all men by these presents that we, Sebastian Bonet, principal, and the American Surety Company, surety, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America; for which payment, well and truly to be made, we bind ourselves, our heirs,

executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of May, 1898.

Whereas lately, at a session of this court, in a cause of prize pending therein, wherein the United States is libellant against The Steamship Pedro and her cargo, and the said Sebastian Bonet is claimant of the steamship, a final decree was rendered in favor of said libellant, and the said claimant having filing (sic) his appeal papers and having obtained an order granting his appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Sebastian Bonet shall prosecute his said appeal to effect 25 and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

(S'd) S. BONET.
(S'd) THE AMERICAN SURETY COMPANY OF NEW YORK,
By GEO. W. ALLEN, Att'y-in-fact.

[SEAL.]

Taken and acknowledged before me May 28th, 1898.

(S'd) JULIUS OTTO,
U. S. Comm'er.

(Endorsed:) The within bond is hereby approved. (S'd) James W. Locke, judge. Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(Request of the U. S. Dist. Att'y for Appraisal of the Steamer Pedro and Copy of Letter from the Attorney General.)

In the District Court of the United States, Southern District of Florida.

To the Hon. James W. Locke, judge:

J. N. Stripling, attorney of the U. S. for the district aforesaid, respectfully represents that the steamship Pedro was, on the 27th day of May, A. D. 1898, adjudged a legal prize of war, and as such was condemned to be sold according to law; that the United States desires to appropriate said ship to their use: therefore by virtue of the authority conferred by the Hon. the Attorney General by letter under date of the 17th day of May, A. D. 1898, a copy of which is hereto attached, he respectfully requests that said ship may be appraised in accordance with the provisions of sec. # 4624 of the Revised Statutes.

Key West, Fla., May 30th, 1898.

(S'd) J. N. STRIPLING, U. S. Att'y.

(Endorsed:) Filed May 31st, 1898. (S'd) E. O. Locke, clerk.

(Letter of Att'y General.)

H. M. H.

Copy.

W. R. L.

6787-1898.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., May 17th, 1898.

In correspondence on this subject quote the above initials & file number.

J. N. Stripling, Esqr., United States attorney, Jacksonville, Fla.

SIR: You are hereby directed, in case the Spanish steamer "Pedro" should be condemned as a prize of war, to take the necessary steps under sections 4624, Revised Statutes, to effect the early delivery of the "Pedro" to the naval authorities for use by the Navy as a collier, store, or ammunition ship.

The Secretary of the Navy will make the deposit required by the last clause of section 4624 when advised of the amount thereof by you through me, and you are hereby directed to inform me at the proper time what amount of deposit will be required.

Very respectfully,

JOHN W. GRIGGS,

27

Attorney General.

(Endorsed :) Filed May 31st, 1898. (S'd) E. O. Locke, clerk.

(Letter of Judge Locke to Commodore Remey.)

United States Courts, Southern District of Florida.

KEY WEST, FLA., May 30th, 1898.

SIR: I have been requested by the Hon. Attorney General to order an appraisement of the prize S.S. Pedro in order that she may be taken by the U. S. Navy.

I know of no civilian at this port who is sufficiently well informed of that class of property, and would be glad to receive any suggestion as to any naval officer not interested in the capture of said prize who might be competent to determine such value.

If you will kindly give me the names of two or three such officers I will be glad to appoint them.

Very respectfully,

(S'd)

JAMES W. LOCKE, Judge.

To Commodore Geo. C. Remey, U. S. Navy, commanding, Key West, Fla.

(Endorsed.)

28

NAVAL BASE, KEY WEST,
U. S. F. S. FERN, May 30th, 1898.

Respectfully returned to Judge J. W. Locke, with the suggestion that Commander C. C. Todd, U. S. S. Wilmington; Chief Engineer

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18 THE STEAMER "PEDRO," ETC., VS. THE UNITED STATES.

F. H. Eldridge, U. S. S. Hel-na, and Act'g Lieut. J. A. Pattson, prize str. Restormel, be appointed as appraisers.

(S'd)

GEO. C. REMEY,
Commodore Com'd'g.

Filed May 31st, 1898.

(S'd)

E. O. LOCKE, Clerk.

Order Appointing Appraisers.

In the District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES
vs.
S. S. PEDRO. } Prize.

It is hereby ordered that Commander C. C. Todd, U. S. N.; Chief Eng'r F. H. Eldridge, U. S. N., and Lt. J. A. Pattson, U. S. N., be and are hereby appointed appraisers to appraise the value of the prize S. S. Pedro and make due report of such appraisement in writing to this court upon completion.

Key West, Fla., May 30th, 1898.

(S'd)

JAMES W. LOCKE, Judge.

29 (Endorsed:) Filed May 31st, 1898. (S'd) E. O. Locke, clerk.

(Oath of Appraisers.)

District Court of the United States, Southern District of Florida.
In Admiralty.

UNITED STATES
vs.
S. S. PEDRO. } Prize.

We, the undersigned, having been appointed as appraisers to appraise the value of the prize S. S. Pedro, do solemnly swear that we will appraise the said S. S. Pedro to the best of our ability and without partiality.

(S'd)

C. C. TODD,
Com'd'r, U. S. N.

(S'd)

F. H. ELDRIDGE,
Chief Eng'r, U. S. N.

(S'd)

J. A. PATTSON,
Acting Lieut., U. S. N.

Sworn to before me this May 31st, 1898.

(S'd)

JAMES W. LOCKE.

(Endorsed:) Filed May 31st, 1898. (S'd) E. O. Locke, clerk.

(Appraisers' Report.)

United States District Court, Southern District of Florida.

THE UNITED STATES }
vs.
THE S. S. PEDRO & CARGO. }

30 The undersigned having been appointed to appraise the steamer Pedro, now at Key West, do report that on the 31st day of May, 1898, they appraised said steamer Pedro and find said vessel to be worth in her present condition the sum of two hundred thousand (\$200,000.00) dollars, which is respectfully submitted.

Key West, Fla., May 31st, 1898.

WES
(S'd)

C. C. TODD,

Com'd'r. U. S. N.

(S'đ)

Compt., U. S.
F. H. ELDREDGE

H. ELDREDGE,
Chief Eng'r U.S.N.

(S'd)

Chief Engr., U.
J. A. PATTSON

A. PATTISON,
U.S.N. Appraiser

Endorsed: Filed May 31st 1898 (S'd) E. O. Locke, clerk

(Order to Deliver Vessel.)

In the District Court of the United States, Southern District of Florida

UNITED STATES
against
THE STEAMER PEDRO. } Prize.

It appearing that application from the Navy Department for the delivery of said steamship Pedro for the use of the navy has been made and due appraisement thereof had by a board of appraisers, who have reported the value of said vessel to be two hundred thousand (\$200,000) dollars—

It is hereby ordered that the marshal surrender and deliver the said vessel to the representatives of the Navy Department at this place as soon as her cargo may be landed therefrom, and

31 place as soon as her cargo may be landed therefrom, and
that the Honorable Secretary of the Navy deposit with the
assistant treasurer at New York the said sum of two hun-
dred thousand (\$200,000) dollars to the credit of the United States
district court for the southern district of Florida.

Key West, Fla., June 1st, 1898.

Wes
(S'd)

JAMES W. LOCKE, *Judge.*

Endorsed: Filed June 1st, 1898. (S'd) E. O. Locke, clerk.

(*Order to Sell Cargo.*)

District Court of the United States, Southern District of Florida.

THE UNITED STATES }
vs.
THE S. S. PEDRO & CARGO. }

In the matter of the claim of Goe. Heise, of Hamburg, for 2,500 bags of rice, and of Edward Twigge, of Liverpool, England, for 1,000 bags of rice, all of the cargo of the said steamship Pedro.

It appearing that the evidence to prove property in the claimants at the time of capture is insufficient, and that further time has been given for further proof, and it further appearing that said rice is liable to deterioration and injury on account of the heat of the climate, awaiting further proof, it is ordered that the marshal proceed to advertise and sell said rice as perishable and cause the proceeds to be deposited to await final action on said claim.

June 6th, 1898.

32 (S'd)

JAMES W. LOCKE, *Judge.*

Endorsed: Filed June 6th, 1898. (S'd) E. O. Locke, clerk.

(*Order Extending Time to File Record.*)

In the United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA }
vs.
THE STEAMER PEDRO AND HER CARGO. }

An appeal having been allowed by the court herein from the final decree in the above-entitled cause condemning the above-named steamer and her cargo—

Now, upon the underwritten consent of the United States attorney for the southern district of Florida and the motion of Wilhelmus Mynderse, proctor for the claimants of said steamship and her cargo, it is hereby ordered that the time of the claimants and each of them to file the record on appeal be and hereby is extended to thirty days from June 25th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

I hereby consent to the entry of the foregoing order.

(S'd)

J. N. STRIPLING,
U. S. Attorney.

Endorsed: Filed June 24th, 1898. (S'd) E. O. Locke, clerk.

33 (*Claim of Compagnie Francaise des Cables Telegraphiques.*)

United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA
against
THE SPANISH STEAMER PEDRO AND HER CARGO. }
} {

UNITED STATES OF AMERICA,
Southern District of Florida, }
} ss:

And now, to wit, this 20th day of June, 1898, comes La Compagnie Francaise des Cables Telegraphiques, by Louis A. Lurinne, its general manager in the United States, and says that the said Compagnie Francaise des Cables Telegraphiques is a corporation organized and existing under the laws of the Republic of France, and is the owner and operates a line of cable and telegraphic communication between France and the United States, and also between France, the United States, and several of the West India islands, including the island of Cuba; that the said Compagnie Francaise des Cables Telegraphiques owns and has on board the above-mentioned steamship, Pedro, the following-described property, intended as a part of the said company's materials and equipments for its cable lines extending into the island of Cuba; that the said Compagnie Francaise des Cables Telegraphiques is the sole owner of the said merchandise, and that no other person, firm, or corporation has any interest therein, viz:

1.	One box printed matter.....	Mt.	10.7	187
2.	" " " "	"	10.1	160
511.	" " writing paper, pens, & pencils.....	"	10.	120
	510. One box ink.....	"	4.1	37
34	17. One box filters.....	Mt.	7.2	40
	6044. " " paper.....	"	9.2	119
6045.	One box	"	9.2	117
6027.	Telegraphic (apparatus or material)	"	12.10	124
3030.	One bbl. Lacombe elements.....	"	8.2	64
5030.	" box linemen's apparatus & tool	"	4.6	71
545.	" " printing matter, writing paper, pens pens and ink	"	9.4	

That the said property was originally shipped from the port of Havre, France, where the same was purchased by and for the account of this claimant for Santiago, Cuba, under bills of lading which are hereto annexed; that the same is the lawful property of the said Compagnie Francaise des Cables Telegraphiques and no other person or persons, corporate or otherwise, whatsoever, and that the said company claims delivery thereof to it or its general manager above stated.

Wherefore the claimant prays that the said property may be adjudged to belong to this claimant, and that the same may be de-

livered to it or its general manager, and that justice may otherwise be done in this behalf.

(S'd) LA COMPAGNIE FRANCAISE DES
CABLES TELEGRAPHIQUES,
By LOUIS A. LURINNE,
Manager, #44 Broad St., New York City.

Sworn to before me this 20th day of June, 1898.

(S'd) FREDRICK KOFF,
[SEAL.] *Notary Public, N. Y. Co.*

(*Order of Court.*)

This claim coming on to be heard upon the test affidavit, and it appearing that the within-named property is neutral property and not subject of condemnation, it is ordered that the same be reserved from sale by the marshal and delivered to the order of the claimant upon the payment of the expenses which have been incurred in the care, custody, storage, &c.

35 Jacksonville, Fla., June 24th, 1898.

(S'd) JAMES W. LOCKE, *Judge.*

(Endorsed:) Filed June 27th, 1898. (S'd) E. O. Locke, clerk.

(*Appraiser's Oath.*)

District Court of the United States, Southern District of Florida.
In Admiralty.

UNITED STATES	}	Prize.
vs.		
S. S. PEDRO & CARGO.		

We, Peter A. Williams, Charles Goodwin, and James G. Jones, who have been appointed appraisers of this court to appraise the pontoon in the cargo of the Spanish S. S. Pedro, do solemnly swear that we will appraise the said pontoon at its true value, to the best of our ability and without favor or partiality, so help me God.

(S'd)	PETER A. WILLIAMS.
(S'd)	CHAS. GOODWIN.
(S'd)	JAMES G. JONES.

Sworn to and subscribed before me this June 28th, 1898.

(S'd)	J. OTTO,
	<i>D'y Clerk, U. S. Dist. Court.</i>

Endorsed: Filed June 28th, 1898. (S'd) E. O. Locke, clerk.

U. S. District Court, So. Dist. of Fla.

The undersigned having been appointed to appraise the three pontoons on board of the S. S. Pedro, now at Key West, do report

that on the 28th day of June, A. D. 1898, we appraised said pontoons, and find said pontoons to be worth, with its material in the present condition, the sum of three thousand six hundred (\$3,600.00) dollars.

All of which is respectfully submitted.

Key West, Fla., June 29th, 1898.

(S'd) JAMES G. JONES,
(S'd) P. A. WILLIAMS,
(S'd) CHAS. GOODWIN, *Appraisers.*

Endorsed: Filed June 29th, 1898. (S'd) E. O. Locke, clerk.

(Further Proof of Edward Twigge.)

I, Edward Twigge, of 25 Castle street, in the city of Liverpool, England, and a British subject, carrying on business at the same place, without a partner, under the style or firm of Twigge & Crossfield, do solemnly and sincerely make oath as follows:

1st. I crave leave to refer to the declaration made by me on the fourth day of May, one thousand eight hundred and ninety-eight, respecting 1,000 bags of Saigon rice, marked H. C. / Cienfuegos.

2nd. At the time of making my said declaration I claimed the said goods by virtue of my right as vendor to stop delivery 37 of the said goods in transit, and also of my right or power as vendor to stop delivery of the said goods until they were actually delivered to and received by the purchaser.

3rd. Since the making of my said declaration I have resold the said 1,000 bags of rice to Messrs. Leber & Meyer, of William street, New York, merchants, American subjects, and I have given them a delivery order for the said goods.

(S'd)

EDWARD TWIGGE.

Subscribed and sworn —, at the city of Liverpool, in England, this 17th day of June, 1898, before me—

(S'd) W. J. SULIS,
*Vice and Deputy Consul of the United States
of America at Liverpool. [SEAL.]*

Endorsed: Filed July 6th, 1898. (S'd) E. O. Locke, clerk.

(Order Extending Time to File Further Proof.)

District Court of the United States for the Southern District of Florida.

THE UNITED STATES OF AMERICA, Libellants, }
against }
THE STEAMER PEDRO & HER CARGO. }

The time for filing further proofs in respect of the claims filed to lots of cargo of this vessel is hereby extended to and including the 31st day of August, 1898.

July 19th, 1898.

(S'd)

JAMES W. LOCKE, Judge.

24 THE STEAMER "PEDRO," ETC., VS. THE UNITED STATES.

38. Consented to.

(S'd)

EDWARD K. JONES,

Special Counsel of the U. S.

(S'd)

WILHELMUS MYNDERSE,

Proctor for Claimants.

Endorsed: Filed July 19th, 1898. (S'd) E. O. Locke, clerk.

(*Order Extending Time to File Record.*)

District Court of the United States for the Southern District of Florida.

THE UNITED STATES OF AMERICA, Libellants, }
against } For Prize.
THE STEAMER PEDRO & HER CARGO. }

It appearing to me, the judge who signed the citation herein, that good cause exists why the record on appeal herein to the Supreme Court of the United States has not and cannot be filed and the said case docketed in the Supreme Court within the time limited by the rules of the Supreme Court and the order heretofore made herein, I do now order that the time within which said record shall be filed and the said case docketed in the Supreme Court be, and the same is hereby, enlarged to and including the first day of September, 1898.

July 19th, 1898.

(S'd)

JAMES W. LOCKE, Judge.

We consent to the foregoing order.

39 (S'd) WILHELMUS MYNDERSE.
(S'd) J. N. STRIPLING, U. S. Atty.

Endorsed: Filed July 19th, 1898. (S'd) E. O. Locke, clerk.

(*Order Regarding Original Documents.*)

U. S. District Court, Southern District of Florida.

THE UNITED STATES }
vs. } Prize.
S. S. PEDRO & CARGO. }

Ordered that the clerk of this court transmit to the Supreme Court of the United States the original documents produced in this case by the prize master and prize commissioners and submitted in evidence in the hearing herein for inspection, if desired, in said Supreme Court upon the hearing of the appeal herein; that the same be securely sealed and a schedule thereof made and attached thereto, and a copy of said schedule be retained by the clerk; said papers,

after inspection and disposition of this case by the said appellate court, to be returned to the files of this court.

July 19th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

Endorsed: Filed July 21st, 1898. (S'd) E. O. Locke, clerk.

40

Opinion.

THE UNITED STATES

vs.

THE SPANISH STEAMSHIPS "BUENA VENTURA," "PANAMA," }
"Catalina," "Miguel Jover," "Pedro," and "Guido," } Prize.
and Cargoes.

The questions involved in these several cases, being of the same character, have been considered together.

Of these vessels, the "Buena Ventura" cleared from the port of Scranton, Miss., on the 16th of April, 1898, and sailed with a cargo of lumber for Rotterdam the 19th of that month, and was captured in the straits of Florida between Key West and Cuba on the 22nd, by the U. S. S. S. "Nashville"; the "Panama" cleared and sailed from New York for Havana with an assorted cargo on the 20th of the same month, and was captured on the 25th by the U. S. S. S. "Mangrove" while approaching that port; the "Catalina" and the "Miguel Jover," laden with cotton and staves, cleared from New Orleans on the 21st of the same month and sailed the evening of the same day for Barcelona and Genoa; the "Catalina" was captured by the U. S. S. S. "Detroit" and the "Miguel Jover" by the U. S. S. S. "Helena," both on the 24th; the "Pedro," which had sailed from Antwerp some time before, had been into Havana, had cleared for Santiago, Cuba, and was captured on the 22nd of the same month, about twelve miles from the port of Havana, by the U. S. S. S. "New York," and the "Guido" from Liverpool, bound for Havana by the way of Santander, Cuwana, and La Puebla, was captured on the 27th by the U. S. S. S. "Terror."

They are all Spanish vessels, sailing under the Spanish flag with royal patents, officered and manned by Spaniards, and, with the exception of the Pedro and the Guido, no question has been raised as to their being enemy's property.

They were all merchant vessels engaged in regular lines of commerce, and this and the hardship and injustice of the captures before a declaration of war has been strenuously urged in argument as contrary to the humane policy of our Government, in addition to the provisions of the President's proclamation.

The principles of law of prize have been so often and so distinctly declared by the highest courts of all civilized countries that they need no extended review here. The law of prize is a law of war, of might, and of force, which is to be exercised at the order and behest of the Executive and not upon the principles of policy or equity, and while prize courts, where questions of doubt arise, yield as far

as possible to the claims of humanity and respect for personal rights, yet they cannot be controlled by such considerations.

The former rule of the law of prize was that the beligerent had a right to capture the property of the opposing beligerent or antagonist, under any circumstances, and to injure him in any way by depriving him of his property.

That was the original practice, but it has been restricted by the gradual advance of civilization until by the prize law of today, as accepted, the captor has the right, in the absence of any declaration or exemption by the political power, to capture, wherever and whenever found afloat, anything which belongs to or is the property of the enemy.

Whenever it is claimed that there is an exemption made by proclamation or by ordinance, the burden of proof is upon the claimant to show that the particular case comes within the exemption,

42 and although such proclamation or ordinance is to be liberally construed in behalf of the claimants, there must be found therein sufficient language to justify the court in finding that the intention was to exempt from seizure the class of property under investigation. The language to justify an exemption must be found; it cannot be presumed from international history or policy, nor from the principles of justice, generosity, or humanity. The important questions in the cases now pending arise upon the construction of the proclamation of the President of the United States of April 26th, 1898.

As it is construed by the claimants of these several steamships, each one of them comes within some provision of this proclamation, which exempts it from the liability of capture and condemnation, but as construed by the attorneys for the captors, not one of them is exempt.

The proclamation is as follows:

"By the President of the United States of America :

"A Proclamation.

"Whereas, by an act of Congress, approved April 25th, 1898, it is declared that war exists and that war has existed since the 21st of April, 1898, including said day, between the United States of America and the Kingdom of Spain ; and

"Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris ;

"Now, therefore, I William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim :

43 "1. The neutral flag covers enemy's goods, with the exception of contraband of war.

 "2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

"3. Blockades in order to be binding must be effective.

"4. Spanish merchant vessels in any ports or places within the United States, shall be allowed until May 21st, 1898, inclusive for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, upon examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any dispatches of or to the Spanish government.

"5. Any Spanish merchant vessel which prior to April 21st, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

"6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with, except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

"In witness whereof, I have hereunto set my hand and
44 caused the seal of the United States to be affixed.

"Done at the city of Washington on the 26th, day of
[SEAL.] April in the year of our Lord one thousand eight hundred
and ninety-eight, and of the Independence of the United
States the one hundred and twenty-second.

WM. MCKINLEY.

"By the President:

"ALVEY A. ADEE,

"*Acting Secretary of State.*"

Examining this proclamation in its several parts, we find, first, the simple declaration and announcement of a recognition of a condition of war since the 21st of April, 1898, as declared by the act of Congress of April 25th, 1898; second, a declaration of the desire that such war shall be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice.

This being the declared intention of the Executive, it must be accepted to aid in construing the subsequent declarations of the proclamation.

The first point in which the Executive desires to continue the practice and be in harmony with the views of nations is that there shall be no privateering; the second, that a neutral flag shall cover the enemy's goods, with the exception of contraband of war, and that neutral goods not contraband of war shall not be liable to forfeiture under the enemy's flag. So far it is very clear that the proclamation has followed the humane practice of all nations more

recently established; but reaching the fourth article of the proclamation, we find it absolutely necessary in these cases, in order to interpret and construe it according to the arguments of either
45 the libellants or the defendants, to read into it some language determining the time at which Spanish merchant vessels should be "in any port or places within the United States" to give them the right of being allowed until May 21st, 1898, for loading their cargoes and departing. There is no expression of any element of time in this connection to aid in the construction, but upon this depends the cases of the "Catalina" and of the "Miguel Jover," which cleared from New Orleans the evening of April 21, 1898.

It is urged by the claimants that the intention of the proclamation was that the exemption should attach to all Spanish merchant vessels in harbor at the outbreak of the war, and that the words "at that date," or their equivalent, should be understood, while the counsel for the captors contends that there can be no retroactive effect of the proclamation, and the only word that could be understood is "now."

Which of these views is in harmony with the present view of nations and sanctioned by their recent practice?

Formerly at the outbreak of war nations lost no time in seizing enemy's shipping found in their ports, although they had entered in good faith in time of peace; but modern usage condemns such a breach of national good faith, and recent practice has been to give certain days of grace to shipping found within enemies' ports at the outbreak of war. In the Crimean war, in 1854, Russian vessels were allowed six weeks to leave British ports; in 1870, thirty days were allowed German vessels in French ports, and French vessels in German ports were allowed six weeks to leave. In 1897 (the Greco-Turkish war), fifteen days were allowed by each nation for the vessels of the opposite nation to clear with impunity. In each of these cases the immunity attached from the outbreak of the war.

46 Was it the intention of this proclamation to apply these days of grace to all vessels in ports of the United States at the outbreak of the war, or to those so in port on the day of the actual issuance of the proclamation? If the latter construction is accepted, it certainly would not be in accordance with the present views of nations nor sanctioned by their recent acts. It would leave a space of five days after the commencement of hostilities when, according to such views and practice, they might be considered exempt from seizure and could safely leave port, but upon issuing of such proclamation became subject to seizure. If they were safe according to the present rule of civilized nations, certainly the issuing of the proclamation at a later day, without declaring that it should be retrospective, should not make them liable.

In the proclamation of the 22nd of April the President had declared that thirty days' grace should be given to neutral vessels found in blockaded ports. Can it be believed that he intended to change the number of days of grace from thirty, already named in one proclamation, to twenty-five in this? If not, why is the 21st of May named? Is it not more reasonable to consider that the same

number of days was intended; which, commencing at the outbreak of the war, would bring it to the 21st of May, the day named?

While it is true that the rule of construction generally is that statutes have no retrospective or retroactive effect, it is not without exceptions, and the principal question always is, what was the intention of the legislators?

It is contended that, the vessels being captured before the proclamation issued, the rights of the captors attached; but if it was the intention to exempt all in port at the outbreak of the war it is

not considered that the attaching of any such right should
47 influence the decision in these cases. Giving the introductory language of the proclamation the force to which I consider it is entitled, I feel compelled to hold that the intention of the

Executive was to fully recognize the recent practice of civilized nations and not to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of war or to permit them to escape from ports to be seized immediately on entering upon the high seas, and that the fourth article should be held to apply to all Spanish merchant vessels in the harbor of the United States upon April 21st, 1898, and exempt them from seizure. This will effect the release of the "Catalina" and the "Miguel Jover."

In regard to the cargoes of such vessels it is not to be considered that it should be the intention of the Executive or the policy of any nation to permit vessels to take in their cargoes up to a certain time and leave the port free and then have them seized, so that the cargoes should be liable to condemnation. What makes the free vessels makes the free cargoes, although it may be found to belong to the enemy.

The fifth article of this proclamation declares that any Spanish merchant vessel which prior to May 21st, 1898, shall have sailed from any foreign port bound to any port or place in the United States shall be permitted to enter such port and discharge her cargo and afterwards to depart without molestation. This raises a question which is not without difficulty in the cases against the "Pedro" and the "Guido."

The testimony shows that both these vessels were owned by a Spanish corporation of Bilboa, Spain, and were engaged in regular trade, with outward cargoes from European—particularly
48 Spanish—ports to Cuban ports to discharge, thence to some part of the United States, usually Pensacola, for a load of lumber for the return voyage. The "Guido" had sailed from Liverpool by way of Santander, Coruna, and La Pueblo, and was bound for Havana. In her regular course, after she had touched at that and several of the Cuban ports, she would have proceeded to Pensacola, and she had among her papers a bill of health for that place, but there was no charter-party or certainty of her going there. She had no cargo for that or any other port of the United States.

The "Pedro," a vessel of the same line, had sailed from Antwerp with cargo destined for several Cuban ports; she had been into

Havana, discharged some cargo and taken other on board, and was bound to Santiago. After she had touched there and one or two other Cuban ports for which she had cargo, she was under charter to proceed to Pensacola to load for lumber for some port in Europe. She had on board no cargo for Pensacola.

It is further contended by the claimants of these two vessels that the fact that their ultimate destination, after stopping at other ports, was a port of the United States to take in cargo, brings them within the provisions of the fifth article of the proclamation as being vessels which prior to April 21st, 1898, had sailed from a foreign port bound for a port or place of the United States, and extended and elaborate arguments were had and cases were cited upon the subject of continuing voyages and their termini. I do not consider that such a construction can be recognized as reasonable when applied to the circumstances of this case, nor that it can for a moment be considered to have been the intention of the proclamation when made.

The reason- for such exemption from seizure are twofold :
49 First, it excuses a vessel which, ignorant of the condition of war, comes directly within the power of the enemy, and is therefore to that extent a protection to commerce and tends to prevent a breaking up of commercial relations between nations upon the first, and perhaps unfounded, suspicion of unfriendly relations between them ; secondly, as the material increase of a nation's possession is always desirable upon the outbreak of war, and the importations of foreign cargoes may well be considered to tend toward such increase, it is desirable to encourage this importation, although brought by ships of the enemy.

But neither of the reasons apply to the cases at bar. These vessels would have been informed of the condition of war long before approaching our shores. In fact, a state of war existed before the "Pedro" left Havana, and having no cargo to bring to this country, they were only coming to take property away and in the meantime carrying on commerce in the interest of the enemy between its ports and supplying it with necessary provisions with impunity.

It is also urged by the claimants of these vessels that although they were owned by a Spanish corporation of Bilboa, La Flecha, the general managers of which were Spanish citizens and resided at Barcelona, a large portion of the stock of this corporation was owned by subjects of Great Britain, who had a lien or *or* equitable ownership of the rest of the stock, so that in reality the vessels were neutral property and had only been put under the Spanish flag to take advantage of certain privileges given them in trading to the Spanish West Indies.

It has been repeatedly declared that the property of a house of trade established in an enemy's country is liable to condemnation as prize whatever may be the domicile of the partners,
50 and this principle will apply with much greater force to the property of a corporation duly incorporated and acting under the laws of an enemy's country, regardless of the domicile of the individual stockholders or any equitable interest neutrals might have

in the stock. A mortgage or equitable lien upon the vessel itself, if held by a neutral, could not protect her from seizure, and much less can an equitable interest in the stock of a corporation which is the owner. These vessels were owned by a Spanish corporation, sailing under a royal Spanish patent, flying the Spanish flag, officered and manned by Spanish citizens, nearly if not quite all of whom were registered as members of the Spanish naval reserve, and they must be taken and considered as in all respects property of enemy and subject to forfeiture.

The "Panama" sailed from New York before the 21st of April, 1898, and was upon the high seas at that time and at the time of capture. The fact that there had been no formal proclamation or declaration of war before she had sailed or at the time she was captured, or that she had at a recent date left a port of the United States, cannot be considered as exempting her from the liability of all enemy's property to capture unless coming directly within the language of the President's proclamation.

The practice of a formal proclamation before recognizing an existing war and capturing enemy's property has fallen into disuse in modern times, and actual hostilities may determine the date of the commencement of war, although no proclamation may have issued, no declaration made, or no action of the legislative department of the Government had. This date has been declared by the act

of Congress of April 25th, 1898, and by the proclamation
51 of the President of the next day, to have been April 21st,

1898, including that day, so that any Spanish property afloat captured from that time became liable to condemnation, unless exempt by the executive proclamation.

In the case of the "Buena Ventura" it is shown by the evidence that she cleared from Scranton, Miss., with permission to touch at Newport News for coal on her voyage to Rotterdam. Although she was to touch there for that purpose, it was not a port of discharge, nor was she from a foreign port, and her case clearly does not come within the language of the proclamation. Had she been captured approaching Newport News for the purpose of coaling, even then there might have been some opportunity for argument that the permission to touch had given her encouragement, and it should in justice furnish the same protection as to a vessel coming from a foreign port, but that was not the case. When captured, she must have been pursuing the same course she would have pursued had there been no intention to stop for coal, and neither such intention nor permission tended in any way to increase the liability of her capture; she was an enemy's vessel, found upon the high seas at the commencement of the war and not coming within the exceptions of the proclamation.

Her cargo was shipped by a citizen of the United States to a neutral port, consigned partly to the shipper's order and partly to a citizen of Great Britain, and is unquestionably either neutral or the shipper's property. The suggestion that it should be condemned, although neutral, because found in an enemy's vessel and at the time of the capture there had been no proclamation issued declar-

ing it not subject to condemnation cannot be entertained for a moment. The policy and law declared in the executive proclamation is considered to be the law by which this court is governed, whether the capture took place before or after the proclamation was issued. It is the existing law by which rights must be determined, and in this matter there can be no possible question of construction or intention.

The cargoes of the "Pedro" and the "Guido" appear from the testimony and the papers found on board to have been mostly shipped by neutrals to parties in the enemy's country. Such shipments are *prima facie* enemy's property and subject to condemnation, but such presumption can be overcome by evidence, and in those cases in which claims and test affidavits have been filed tending to show the ownership time will be given for further proof; but the property all being either perishable or subject to deterioration by delay, or such that the cost of keeping will be disproportionate to its value, an order of sale will issue and the claim stand against the proceeds of sale.

The "Panama," after touching at Havana, was bound for Vera Cruz, and a large portion of her cargo is shown to have been shipped to Mexico and consigned to residents, and, presumptively, citizens of that Republic. That is all *prima facie* neutral property and will be released. The rest, shipped by merchants in New York and consigned to parties in Havana, is presumably the property of the consignees, but, where claims and test affidavits have been filed combating that presumption, time for further proof will be given, as in the cases of the "Pedro" and the "Guido." When the property can be immediately restored to the claimants, it will be so ordered, but otherwise it will be sold, pending further proof, as the greater part, if not all, is liable to deterioration by the delay.

Opinion filed July 13, 1898.

E. O. LOCKE, Clerk.

53 Standing interrogatories established by the district court of the United States for the southern district of Florida, to be administered in prize causes in said court, to all persons who may be produced as witnesses to be examined *in preparatorio*.

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined,

taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured, a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ship- in sight, at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, auy, and what part, share or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? Wheu and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board, and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was takeu? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo of said vessel been unladen, since the commencement of her

original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel? and if any such were made in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has come of it?

11th interrogate. Was the said lading put on board at one port and at one time or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief, that they have such interest? Do you verily believe, that at the *at the* time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons and to none others?

54 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship, at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other

writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed, or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17 interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned.

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture, of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted, at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession or occupation? Had they any commission? for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers or mariners secreted on board and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were, and are, all the passports, sea briefs, charter-parties, bills of sale, invoices and papers, which were found on board, entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or persons who appear to have been sworn, or to have affirmed thereto, without their ever having, in fact, make any such oath or affirmation? How long — time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? and if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe conduct? If yea, from whom and for what business? Had the said ship any license or passport from any foreign power or authority during the voyage? If so, state from whom — been obtained, and for what purpose and use.

55 28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to her captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course, at the time of her being first pursued and taken? Was her course altered, upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before, or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any, and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid,

a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made and not for the purposes of covering or concealing the real property? Do you verily believe, that if the ship should be restored, she will belong to the persons now asserted to be the owners and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where — they put on board? and by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole — which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo, concerning which you are now examined at the time of the capture?

56 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA }
vs. } Prize.
THE SPANISH STEAMER "PEDRO." }

Deposition of Sebastian Bonet, a witness produced, sworn, and examined *in preparatorio* on the 6th day of May, A. D. 1898, at the U. S. court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination, in behalf of the captors of a certain ship or vessel called the Pedro.

1. To the first interrogatory deponent answers:

My name is Sebastian Bonet. I was born in Palma Mayorca, Baleric islands. I have resided during the last seven years on board the steamer Pedro. I am a subject of Spain. I am a married man. My wife resides in Santander.

2. To the second interrogatory deponent answers:

I was present at the time of the seizure of the Pedro. The ship had a royal patent issued by the Spanish government.

3. To the third interrogatory deponent answers:

The ship was captured twelve miles, more or less, from Havana; I do not know the latitude or longitude. The vessel was captured on the 22nd day of April, 1898, at 6.10 p. m. The said vessel was captured upon the ground that war existed between Spain and the United States. The said vessel was carried into the port of 57 Key West under the Spanish flag. We had the English flag on board. I found it there when she was bought from the English people who formerly owned the vessel. My ship made no resistance at the time of the capture. I did not know the name of the ship which captured my vessel, but I was told by the boarding

officer that it was the New York, American man-of-war. There were several ships in sight at the time of my capture. I counted fourteen ships at the time, among them including tugs and yachts. I did not know the names.

4th. To the 4th interrogatory deponent answers:

The name of the master of the ship captured is Sebastian Bonet. I am the person who is master. I was appointed master of said ship by Don Jose Serra y Font, who is general manager for the owner of said vessel, about nine years ago. I received possession of said vessel from G. H. Fletcher & Co., general agents of the owners at Liverpool, England.

5. To the fifth interrogatory deponent answers:

Her registered tonnage per Spanish, 1,618.80 registered tons. There were on board 35 men, including the captain. They are all Spanish subjects. I shipped them at different ports at different times, but the majority of them were shipped at Santander.

6. To the sixth interrogatory deponent answers:

The captain and none of the officers had any interest in the vessel and cargo. I have known the said vessel about nine years. I first saw her in Rotterdam nine years ago. She was built at New Castle.

58 7. To the 7th interrogatory deponent answers:

The vessel's name is Pedro; she has been called the Pedro about nine years. She was called at a time the Libbon Tower. I am not sure of the name; something like that. The last voyage of the vessel began at Antwerp and ended at Pensacola, where we were to take on board a cargo of lumber. The last port that I cleared from was Havana, Cuba.

8. To the eight interrogatory deponent answers:

The cargo carried by the vessel at the commencement of her last voyage out of Antwerp was mostly rice and about 100 tons of general cargo. At the time she was captured the vessel was loaded with part of the aforesaid cargo; the other portion had been unloaded at Havana. The said cargo had been laden at the commencement of the voyage at Antwerp. I do not know the articles then on board, but the manifest which was turned over to the boarding officer will show what was on board.

9. To the ninth interrogatory deponent answers:

The owners of the vessel at the time of her seizure was La Compania La Fletcher. I do not know who the owners are now, but Don Jose Serra y Font is general director of this company. I know that they are the owners by the royal patent and document of the ship which were turned over to the capturing officer. I do not know the country to which the owners of said vessel belong. I do not know where they or their families live. I do not know who they are subjects of. I do not know the names of the persons who compose the company which owns the vessel, which is the reason I cannot give you their places of residence or anything about them.

The home office of the La Fletcher Company is at Bilboa, Spain. The company has been in possession of the vessel about nine years. I do not know from whom they purchased the said vessel.

10. To the tenth interrogatory deponent answers:

Witness says that he knows nothing about the matters and things therein interrogated.

11. To the 11th interrogatory deponent answers:

The part of the cargo was put on board at Antwerp at one time and another part at Havana.

12. To the 12th interrogatory deponent answers:

I cannot tell you the names of the respective owners and consignees of the cargo of said vessel. The manifest will show it. I do not know — what country the owners or consignees of said vessel belong. The manifest and bills of lading will show where the consignees reside and do business. The goods were to be delivered to the places mentioned in the manifest, and I believe they were for the benefit of the persons mentioned in the manifest.

13. To the 13th interrogatory deponent answers:

The bills of lading are given by the agents, and sometimes a copy is given to the ship and sometimes they are mailed direct to the consignees at the port of destination.

14. To the 14th interrogatory deponent answers:

There are no bills of lading, as far as I know, in the United States in relation to the cargo of said ship.

15. To the 15th interrogatory deponent answers:

The vessel was not under a charter-party for the cargo
60 which was captured, but the vessel was under charter to go to Pensacola for a load of lumber at the time of sailing.

16. To the 16th interrogatory deponent answers:

All papers on board the ship at the time of her capture *was* delivered to the prize master. None of them were burnt, torn, destroyed, or thrown overboard.

17. To the 17th interrogatory deponent answers:

This ship has never before been seized and condemned as a prize.

18. To the 18th interrogatory deponent answers:

I do not know if my wages will be paid to me during the term of my capture. If they are not, that will be the extent of my loss. I have received no indemnity or promise of indemnity or satisfaction for any part of damage which I have sustained or may sustain by this capture.

19. To the 19th interrogatory deponent answers:

I do not know whether or not the said ship or cargo or any part of the same is insured.

20. To the 20th interrogatory deponent answers:

I suppose that if I had delivered the goods to the consignee that they would have belonged to them.

21. To the 21st interrogatory deponent answers:

I do not know where the cargo was grown, produced, or manufactured.

22. To the 22nd interrogatory deponent answers:

61 All the cargo brought on board the ship from Antwerp was taken from the dock; that from Havana was taken on board by lighters.

23. To the 23rd interrogatory deponent answers:

I do not know anything about any bills of lading being in the United States or elsewhere, except as before stated.

24. To the 24th interrogatory deponent answers:

The ship's papers were taken by the prize master, and I suppose that they are now with the prize commissioners.

25. To the 25th interrogatory deponent answers:

I delivered part of my cargo at Havana as per orders.

26. To the 26th interrogatory deponent answers:

There were no passengers on board the ship at her time of capture. There were no officers, soldiers, marines, or citizens of the United States on board the vessel at the time of her capture.

27. To the 27th interrogatory deponent answers:

All the papers and documents found on board my vessel were true and correct. All the papers of the ship at the time of her capture were obtained solely for the vessel. The royal patent has never been renewed. At the time the royal patent was granted the said vessel was in a Spanish port. The said ship had no passport or other foreign papers during her voyage.

28. To the 28th interrogatory deponent answers:

I have written a letter to Messrs. Fletcher & Co. at Liverpool and Don Jose Serra y Font, informing them that I had been 62 captured and was at Key West.

29. To the 29th interrogatory deponent answers:

She was pursuing her course towards Santiago, Cuba, when we were captured. Her course was not altered at the appearance of the vessel which captured us. The course was all time, weather permitting, directed toward the port of destination, as shown by the ship's papers. She was not before or after sailing wide of our port of destination. I do not know the exact distance to our port of destination. Her course was altered after the capture to Key West port.

30. To the 30th interrogatory deponent answers:

The witness says that in my previous answers I have stated that I do not know of any transfers or sales of said ship except what is shown by the ship's papers. If the ship was restored I believe she would belong to the persons said to be the owners.

31. To the 31st interrogatory deponent answers:

There were no guns on board. The ship has no guns or ammunition belonging to them. There were a few revolvers, not more than three, which belonged to crew of the boat.

32. To the 32nd interrogatory deponent answers:

I have stated all that I know about the matter, and have stated my knowledge and belief in relation to the ship and cargo at the time of her capture.

S. BONET.

Sworn to and subscribed before me this 6th day of May, 1898.

J. M. PHIPPS,
Prize Commissioner.

63

THE UNITED STATES OF AMERICA }
 vs. } Prize.
 THE SPANISH STEAMER PEDRO.

Deposition of Juau Argacha, a witness produced, sworn, and examined *in preparatorio* on the 7th day of May, A. D. 1898, at the U. S. court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the Pedro.

1. To the first interrogatory deponent answers:

My name is Juan Argacha. I was born at Mundaca, Spain. During the last seven years I have been navigating the seas, but my place of residence is Mondaca, Spain. That has been my home ever since I was born. I am a subject of Spain. I am a married man and my family resides at Mondaca, Spain.

2. To the 2nd interrogatory deponent answers:

I was present at the time of the taking of the steamer by the man-of-war. I was on the bridge. The ship had a royal patent issued by the Spanish government.

3. To the 3rd interrogatory deponent answers:

The said ship was captured about twelve miles east of Morro Castle, Cuba, and five miles from shore. She was seized because war had been declared between Spain and the United States. The said ship sailed under the Spanish flag and she was carried into the port of Key West. We had on board one English flag and the international code signals. She was captured by the U. S. war ship "New York." There were several ships in the distance.

64. 4. To the 4th interrogatory deponent answers:

The name of the ship's master is Sebastian Bonet. I have known the said master for about ten years. I do not know who appointed him to the command of said vessel; I do not know where the master took possession or when or the name of the person who delivered the possession to him. I do not know where the master lives. He is a subject of Spain. He was born at Mayoca, Baleric islands. The captain is a married man; his family resides in Santander, Spain.

5. To the 5th interrogatory deponent answers:

The captured vessel is 1,618 registered tons. She had on board 35 mariners, including the captain. They are all Spanish subjects. They came on at different ports, and they were hired through the agent at Santander principally.

6. To the 6th interrogatory deponent answers:

None of the officers or mariners of the ship had any interest in the vessel or cargo, except the salary which was owed to them by the owners of the ship. I belonged to the ship at the time she was taken. I was first mate of the ship. I have known the ship for about eight years. I don't remember where I first saw her, but she was built at New Castle, England.

7. To the 7th interrogatory deponent answers :

The vessel's name is Pedro, ever since I knew her, about eight years. She was at one time called the Lilbon Tower, when she was sailing under the English flag. She had on board the royal patent issued by the Spanish government at the time she was seized.

65 She sailed from the port of Antwerp for Pensacola, Florida, via Cuban route. The ship, previous to her capture, had cleared from Havana.

8. To the 8th interrogatory deponent answers :

We carried a general cargo at the time of first setting sail. We had on board a part of the general cargo when we were captured. The said cargo was placed on the ship at the port from which we first sailed, and about twenty tons were put on our ship at Havana from another ship, viz., "Oliver." I cannot set forth the different species of cargo or the amount of each ; the manifest will show what we had on board. A part of the cargo was unladen at Havana. I do not know the articles which were unladen at Havana.

9. To the 9th interrogatory deponent answers :

At the time the vessel was seized she belonged to the Compania La Fletcher. I know that the said ship did belong to the said company, and I do not know that the ownership has ever been changed. The said owners of the ship and members of the company are Spaniards by birth. The company resides at Bilboa, Spain, but I do not know who they are. I do not know how long they have resided there. They are a Spanish company. I do not know how long the said company have been in possession of the said ship, or from whom they purchased said vessel.

10. To the 10th interrogatory deponent answers :

I know nothing about any bill of sale or transfer of this ship.

11. To the 11th interrogatory deponent answers :

66 The cargo of the vessel was loaded at Antwerp and some at Havana, Cuba. I cannot set forth what quantity of each kind of goods were taken on board ; about 2,000 tons was taken on board at Autwerp.

12. To the 12th interrogatory deponent answers :

The manifest will show the names of the shippers and the consignees. I do not know who they are. I do not know to what country they belong. I do not know where they live or where they carry on their business. I do not know where the cargo was to be delivered, and do not know whether they were at the risk of the shippers or the consignees. I think that if the goods had been delivered to their port of destination they would have belonged to the consignees.

13. To the 13th interrogatory deponent answers :

I know nothing about how many bills of lading was signed or whether any were signed.

14. To the 14th interrogatory deponent answers :

I know nothing about any bills of lading, invoices, or other papers relating to the cargo in the United States.

15. To the 15th interrogatory deponent answers :

We had a charter-party to go to Pensacola to carry some lumber to Europe. I heard this, but do not know it of my own knowledge.

16. To the 16th interrogatory deponent answers:

The ship's papers, such as the manifests, invoices, and others, were on board at the time she sailed from her last port.

67 None of the ship's papers were destroyed, burnt, or concealed or attempted to be concealed at the time of her capture.

17. To the 17th interrogatory deponent answers:

The said ship has never before been seized and condemned as a prize, so far as I know.

18. To the 18th interrogatory deponent answers:

I think I will loose all of my wages owing to this capture. I have not received any indemnity or any promise of indemnity for any loss which I have sustained or which I may sustain owing to this capture.

19. To the 19th interrogatory deponent answers:

I do not know whether or not said ship or cargo is insured.

20. To the 20th interrogatory deponent answers:

I believe that if we had arrived at our port of destination—I believe that if the cargo had been unladen—that it would have belonged to the consignees mentioned in the manifest.

21. To the 21st interrogatory deponent answers:

I do not know what country the cargo was grown, produced, or manufactured in.

22. To the 22nd interrogatory deponent answers:

The cargo at Antwerp was taken on board at the wharf and the cargo at Havana was taken on board from another vessel.

23. To the 23rd interrogatory deponent answers:

I know nothing about any bills of lading and invoices 68 being on board any other vessel or in the United States or any other country.

24. To the 24th interrogatory deponent answers:

The only papers carried out of the ship were taken by the officer of the man-of-war, and I believe they are now in the possession of the prize commission.

25. To the 25th interrogatory deponent answers:

The bulk of the cargo was broken at Havana, where we discharged the cargo for that place, and has not been broken since.

26. To the 26th interrogatory deponent answers:

There were no passengers on the ship. There were no officers, soldiers, or marines on board. There were no citizens of the United States on board.

27. To the 27th interrogatory deponent answers:

I believe that all the passports, sea briefs, etc., were true and correct. I do not know of my own knowledge that the clearance papers and other papers relating to the ship were obtained from the custom authorities of Havana, but I believe it to be so. No person, to my knowledge, had any passport or letter of safe conduct at the time we were captured. The ship had a license from the Spanish government in the shape of a royal patent.

28. To the 28th interrogatory deponent answers:

I have not written any letter or other paper or signed the same since the capture of said vessel.

29. To the 29th interrogatory deponent answers:

69 At the time the vessel was captured we were steering for Santiago de Cuba. The course was not altered upon the appearance of the capturing vessel. Her course at all times, weather permitting, directed toward the port of her destination, shown by the ship's papers. She was not sailed wide or beyond her point of destination. I do not know what her distance was from the port of her destination at the time of her seizure. Her course was altered after her capture for the port of Key West.

30. To the 30th interrogatory deponent answers:

I do not know anything about the ship being sold or transferred. I believe that if the ship should be released that she would belong to the persons asserted to be the owners and none others.

31. To the 31st interrogatory deponent answers:

There were no guns mounted on board the ship. There were no arms or ammunition on board belonging to the ship.

32. To the 32nd interrogatory deponent answers:

The destination and property of the cargo is properly shown by the manifest and has been correctly stated by me, to the best of my knowledge and belief. I have already stated all that I know.

(S'd)

JUAN ARGACHA.

Sworn to and subscribed before me May 7th, 1898.

J. M. PHIPPS,

Prize Comm'rs.

70 EXHIBIT "A" (Annexed to Test Affidavit).

Form E.

Culliford, Clark & Co.; Crow, Rudolf & Co., Liverpool.

Pitch pine—"steam."

LIVERPOOL, 18th March, 1898.

It is this day mutually agreed between Messrs. G. H. Fletcher & Co., of the good steamship called the Pedro, under the Spanish flag, of 1,892 tons net register measurement or thereabouts, and classed 110 A 1, now loading in Antwerp for Cuba, and W. S. Keyser & Co., merchants, of Pensacola, Fla., Mobile, Ala., and Moss Point, Miss., per Crow, Rudolf & Co., of Liverpool, as agents—

That the said vessel shall with all convenient speed sail and proceed to Pensacola or Ship island, or as near thereto as she can safely get, and (being in hull, machinery, tackle and apparel, tight, staunch and strong, and in every way fitted for the voyage) there load (always afloat) from the said merchants, their agents or assigns as customary, a full and complete cargo to consist of sawn timber and / or deals and / or boards at merchants' option, which said merchants bind themselves to ship, not exceeding what she can reasonably stow and carry over and above her cabin, crew and fuel spaces, tackle,

apparel, provisions and furniture, and being so loaded proceed therewith as customary to Rotterdam (charterers to have option of ordering vessel to Antwerp instead s. of d. Rotterdam to discharge, in which case the rate of freight to be 113 / 9). The cargo to be applied for at port of discharge within twenty-four hours of steamer's arrival and reporting at custom-house (Sundays & holidays excepted) otherwise the master or agent is to be at liberty to put into lighters or land same at the risk and expense of the owners of the goods as ordered on signing bills of lading, or as near thereto as she can safely get, and there deliver her cargo at such wharf, dock, or place, as consignees of cargo may direct on arrival, always afloat, and in accordance with bills of lading.

1. Deck-load (if required by the master) to be supplied by charterers, of hewn and / or sawn timber and / or deals and / or boards at their option. No timber or deals to be cut without the written permission of the shippers, and number of cuts (if any) to be inserted in bill of lading.

No bulkheads or middle stanchions to be removed unless with captain's consent.

2. The act of God, restraint of princes and rulers, public enemies or people, pirates or robbers, barratry of the master or crew, fire from any cause or wheresoever occurring, floods, droughts, perils of the sea or other waters, riots, strikes or stoppage of labour, collisions, stranding, or other accidents of the seas, rivers and navigation of whatsoever kind, (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the ship-owner, not resulting, however, in any case from want of diligence by the owners of the ship or any of them, or by the ship's husband or manager,) or any other extraordinary occurrence beyond the control of either party, always mutually excepted. Vessel to have liberty to sail with or without pilots, and to tow and assist vessels in all situations; also to call at any port or ports for coal and / or other supplies.

3. In consideration whereof, freight is to be paid as follows:—

Five pounds, eleven shillings, and three pence sterling (£5 11 3) per St. Petersburg standard of 165 cubic feet, as customary at the port of discharge. Sufficient suitable timber and / or deals and / or boards at merchants' option to be supplied for beam fillings and stowage. Twenty per cent. of the entire cargo to be at two-thirds rate of freight.

4. Freight to be paid as follows: One-third in cash on arrival (less foreign advances, if any), and the remainder on right delivery of cargo, in cash, less two per cent. If discharged on the continent, freight to be paid at current exchange. Freight on deals and boards payable on intake measure of quantity delivered, as customary.

5. No timber to be required shorter than 12 feet, and no deals and / or boards shorter than 12 feet. Charterers agree to furnish only such cargo as will go through vessel's hatches. Deals & boards to be supplied for number 4 hold.

6. Bills of lading to be signed as presented without prejudice to this charter, but any difference of freight to be settled on signing

bills of lading, if under chartered rate, in cash less interest and insurance, if over chartered rate, by master's draft, payable five days after arrival at port of discharge. In the absence of fraud, of clerical, or obvious errors, the captain's signature to bill of lading to be accepted as binding on owners, and in case of short delivery of cargo owners or captain shall furnish an extended protest, if required, showing the cause of such short delivery.

7. Sufficient cash for ship's ordinary disbursements at port of loading to be advanced the master by charterers or their agents at the current rate of exchange, subject to insurance and 2½ per cent. commission, master to give his draft on owners or consignees, as required and customary to cover same, insurance to be done at current Liverpool rates. Charterers or their agents shall in no way be responsible for the appropriation of said advance.

8. Sixteen working days are to be allowed charterers for furnishing the cargo at port of loading.

9. Lay days to commence on the day after the vessel is ready (in loading berth) to receive cargo, and written notice given of same to charterers, but days for discharging shall be according to the custom of the port of discharge. In the computation of the days allowed for delivering and receiving the cargo shall be excluded any time lost by reason of fire, droughts, floods, storms, strikes, lock-outs, combinations of workmen, or any extraordinary occurrence beyond the control of the charterers or of the receivers of the cargo.

10. Should the cargo not be delivered to vessel within the specified time, for each and every day over and above said lay days, charterers are to pay day by day the sum of four pence sterling per net register ton demurrage, any detention through quarantine not to count in lay days.

11. Cargo to be delivered to vessel alongside, and to be taken from alongside at port of discharge, always within reach of ship's tackles, and at merchant's risk and expense, vessel always lying afloat. Lighterage, if any, to be at the risk and expense of cargo.

12. Should the vessel not be in all respects ready for cargo and at her loading place on or before the 18th of May, 1898, charterers or their agents have the option of cancelling this charter.

13. If required by charterers lay days are not to commence at loading port before the 5th May, 1898.

14. The cargo to be delivered alongside at merchant's risk and expense, and to be received by the master and secured by the ship's dogs and chains when so delivered, and to be then at ship's risk. Should the master order more timber or deals or boards alongside than the ship requires for loading, the expense of taking it from and back to the booms or mills to be paid by the ship. The ship to discharge each lighter having lumber for cargo or broken stowage without unreasonable detention, and the master to give the charterers or their agents written notice three clear days before broken stowage is required. When the ship is ready to load, the master to give charterers written notice of the quantity of cargo required.

15. Steamer to furnish steam at her own expense if required by charterers to do so (for loading cargo) and labour combinations do

not prevent steamer to load at night and holidays, if required, charterers paying extra expenses incurred.

16. Charterers to have the privilege of shipping other lawful merchandise, but vessel shall then receive a lump sum equal to the freight of a cargo of timber as above, any excess charges on such cargo, over what they would be on timber, shall be paid by charterers, but if these charges should be less than on timber, charterers are to have the benefit of the difference.

17. The vessel to be consigned to charterers or their agents at port of loading, paying them $2\frac{1}{2}$ per cent. address commission on estimated amount of freight.

18. Charterers or their agents to appoint and pay a stevedore to do the stowing of the cargo under the supervision of the master, to supply dogs and chains, pay wharfage, custom-house, tonnage, quarantine dues (but including fumigating expenses should such be incurred) except the ship arrives with sickness on board and consular fees for entrance and clearance, harbor master fees, and pilotage in and out, at two (\$2.00) dollars per load of 50 cubic feet, on the entire cargo taken aboard at port of loading.

19. A brokerage of five per cent. on amount of charter is due by ship to Culliford, Clark & Co. on the signing hereof, ship lost or not lost. The charterers' responsibility under this charter shall cease as soon as the cargo is shipped and bills of lading signed, provided all the conditions called for in this charter have been fulfilled, or provided for by bills of lading.

Bills of lading to contain the following clause: All other conditions and exceptions as per charter-party dated 18 March, 1898.

20. Any dispute under this charter-party shall be settled at the port where it arises. The custom of each port to be observed in all cases where not specially expressed.

21. General average, if any, to be adjusted according to York / Antwerp rules, 1890.

Penalty for non-performance of this agreement to be the proven damages not exceeding the estimated amount of freight.

Owners to have privilege of calling at Pensacola first for coal and for pig iron. Charterers to have the option of loading steamer at both Pensacola and Ship island, in which case they are to pay owners of steamer the sum of twenty-five pounds extra.

(S.)

G. H. FLETCHER & CO.

(S.)

CROW, RUDOLF & CO., *As Agents.*

Witness, C., R. & Co.:

(S.) C. W. MASON.

18, 3, '98.

[Printed on the margin.]

A true and correct copy of the original.

CULLIFORD, CLARK & CO.

71 EXHIBIT "B" (Annexed to Test Affidavit).

By the President of the United States of America:

A Proclamation.

Whereas, by an act of Congress approved April 25, 1898, it is declared that war exists, and that war has existed since the 21 day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain, and

Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris,

Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

First. The neutral flag covers enemy's goods with the exception of contraband of war.

Second. Neutral goods not contraband of war are not liable to confiscation under the enemy's flag.

Third. Blockades, in order to be binding, must be effective.

Fourth. Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; provided, that nothing herein contained shall apply to Spanish vessels having on board any officers in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

Fifth. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States shall be permitted to enter such port or place, and to discharge her cargo and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

Sixth. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest ground of suspicion of a violation of law.

In witness whereof, etc.

WILLIAM M'KINLEY.

Done at the Dep't of State, etc., this 26th day of April, etc.

72

EXHIBIT "C" (from Ship's Papers).

No. 96.

Real Patente de Navegacion Mercantil.

Comandancia de Marina de Santander.

Don Alfonso XIII.

Por la Gracia de Dios y la Constitucion, Rey de Espana, y en su Nombre, y Durante su Menor Edad,

La Reina Regente del Reino.

Por cuanto he concedido permiso a la Compania de Navagacion "La Flecha" para que con el Vapor nombrado "Pedro" de su propiedad del folio — de la quinta lista de embarcaciones de la inscripcion del puerto de Santander, de 99' 90 metros de eslora II' 82, de manga y 8' 47, de puntal, pueda navegar y comerciar en todas los mares y puertos del Globo.

Por tanto, ordeno que, constando la pertenencia de la embarcacion al referido la Compania de Navagacion "La Flecha" o a otro subdito espanol, el Comandante de Marina, sus subalternos ó cualquiera otro funcionario á quien corresponda, concurran á facilitarle lo que necesitase, asi por lo respectivo á su armamento, como por la que mira á su tripulacion, de que debera formarse lista, y obligarse al Capitan que manda dicho buque á cuidar de su conservacion y responder de sus faltas, segun previenen las Ordenanzas de Marina, permitendole salir á navegar y comerciar bajo las reglas establecidas.

Y mando á las Oficiales Generales ó particulares Comandantes de escuadra y bajeles á los Capitanes Generales de los Departamentos de Marina y demas autoridades de cila y otros cualesquiera Oficiales ó dependientesde la Armada; á los Capitanes y Comandantes Generales de distritos y provincias, las autoridades civiles y judiciales de los puertos de estos dominios, y á todos los demás subditos espanoles á quienes correspondiere, no le pongan embargo ne causen molestia ó detencion alguna, antes bien le auxilien ó faciliten lo que hubiere menester para su regular navagacion y legitimo comercio. Y á los subditos de Reyes, Pricipes y Republicas amigas y aliadas; a los Jefes, Gobernadores ó Comandantes de sus provincias, plazas, escuadras y bajeles, remiendo que asimismo no le pongan impedimento á su libre navagacion, entrada, salida ó detencion en los puertos á los cuates deliberadamente ó por accidente se condujere, y le permitan ejercer en ellos su legitimo comercio, bastimentarse y proveerse de lo necesario para continuarla; á cuyo fin he mandado despachar esta Real Patente, la cual, firmada por Mi y refrendada por el Ministro de Marina, servira y tendra fuerza a considerandose en todas circunstancias como exclusivamente inherente al Vapor "Pedro," interin este buque se halle bajo

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el pabellon Espanol y no varie de capacidad y figura en el casco y aparejo.

Dado en Palacio á cuatro de Octubre de Mil ochocientas ochenta y siete.

Y— la Reina Regente.
(Ministerio de Marina.)

RAFAEL RMARIAS.

	Toneladas.
Total	2.537' 17
Tonelaje: Correspondiente á los decuentos	918' 37
Neto	1.618' 80

Esta Real Patente de Navegacion Mercantil para todos los mares del Globo, numero 96 se expide por mi el infrascristo Comandante de Marina, en el dia esta fecha, extendida a favor del Vapor 74 nombrado "Pedro" del folio — de la lista de embarcaciones de esta Provincia naval, habiendo precedido el cumplimiento de todas los requisitos prevenidos en las disposiciones que rigen sobre esta materia, y con la obligacion de devolverlo ó estar á las resultas de su perdida ó extravio, y hacer en todo tiempo buen uso de el y no ejercitarse en el comercio illicito.

Dado en Santander, á 16 de Setiembre de 1889.

NOTA.—Esta Patente debera contener siempre tantos sellos por valor de setenta reales vellon como periodos de tres anos cuente desde la fecha de su expedicion; bien entendido que dichos sellos deberan colocarse en todo el primer ano de cada periodo bajo la pena de una multa de cinco reales vellon por cada tonelada de las que mida el buque, en caso de omision injustificable, y cuya multa se cargara al dueno del mismo.

Los sellos de que se trata seran precisamente los designados para objeto en las Reales ordenes vigentes.

BUENEVENTA PILON Y STERLING.

EXHIBIT "D" (from Ship's Papers).

No. 63. Form No. 1931a. Port of Antwerp.

UNITED STATES OF AMERICA:

Bill of Health.

I, Geo. F. Lincoln, consul (the person authorized to issue the bill) at the port of Antwerp, do hereby state that the vessel hereinafter named clears from this port under the following circumstances:

Name of vessel, Pedro; nationality, Spanish; rig, schooner; master, Sebastian Bonet; tonnage, gross, 2,872; net, 1,618; iron or wood, iron; number of compartments for cargo, 4; for steerage passengers, none; for crew, 3; name of medical officer, none.

Number of officers, 3; number of crew, including petty officers,

31; number of passengers, cabin, none; number of passengers, steerage, none; number of persons on board, all told, 34.

Port of departure, Antwerp.

Where last from, Havre, in ballast.

Number of cases of sickness and character of same during last voyage, none.

Vessel engaged in Atlantic trade, and plies between Antwerp, Cuba, and the United States.

Sanitary condition of vessel, good.

Nature, sanitary history, and condition of cargo, water ballast, good.

Source and wholesomeness of water supply, Antwerp Water Works Co., Ltd.

Source and wholesomeness of food supply, Belgium, best.

Sanitary history and health of officers and crew, good.

76 Sanitary history and health of passengers, cabin, none.

Sanitary history and health of passengers, steerage, none.

Sanitary history and condition of their effects, none.

Prevailing diseases at port and vicinity, pneumonia.

Location of vessel while discharging and loading—open bay or wharf—wharf.

Number of Cases and Deaths from the Following-named Diseases During the Past Two Weeks.

Diseases.	No. cases.	No. deaths.	Remarks.
(Any conditions affecting the public health existing in the port of departure or vicinity to be here stated. When there are no cases or deaths entry to that effect must be made.)			
Yellow fever.....			
Asiatic cholera.....			
Cholera nostras or cholerine.....			
Smallpox.....			
Typhus.....			
Plague.....			
None.		None.	

I certify that the vessel has complied with the rules and regulations made under the act of February 15, 1893, and that the vessel leaves this port bound for Pensacola, for in the United States of America, via Havana, Santiago, & Cienfuegos.

Given under my hand and seal this 24th day of March, 1898.

[SEAL.]

(Signature of consular officer :) GEO. F. LINCOLN,

[SEAL.]

U. S. Consul. [SEAL.]

Received \$5.00 /s 26-.

Consular fee No. 63.

77 EXHIBIT "E" (from Ship's Papers).

Art. 179, customs.

Regulations of 1892.

Cat. No. 491.

No. 80294.

Certificate of Payment of Tonnage Duty.

(To be issued in all cases under seals of collector and naval officer.)

U. S. CUSTOM-HOUSE, PORT OF NEW ORLEANS.

I hereby certify that on this 27 day of May, eighteen hundred and ninety-eight, the tonnage duty of six cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, was paid on the Span. S/S Pedro—Bonet, master—of Bilboa, by A. K. Miller & Co., as per American ad-measurement, 1,619 tons, amounting to ninety-seven dollars and fourteen cents.

The above payment was made on entry from Liverpool, Eng., on the 28 day of Jan'y, 1898, being the 4th payment on entry in the year beginning M'ch 2, 1897.

Schedule of Payments.

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st.....	M'ch 2, '97	1,619	6	\$97 14	New Orleans.
2nd.....	June 5, '97	1,619	3	48 57	Sabine Pass.
3rd.....	Oct. 16, '97	1,619	6	97 14	Galveston.
4th.....	Jan'y 28, '98	1,619	6	97 14	New Orleans.
5th.....					

P. O. LABATUS,
Naval Officer.CALHOUN FLUKER,
D'y Collector.

78 EXHIBIT "F" (from Ship's Papers).

Art. 179, customs.

Regulations of 1892.

Cat. No. 491.

No. 78929.

Certificate of Payment of Tonnage Duty.

(To be issued in all cases under seals of collector & naval officer.)

U. S. CUSTOM-HOUSE, PORT OF GALVESTON.

I hereby certify that on the 16 day of Oct., eighteen hundred and ninety-seven, the tonnage duty of 6 cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, was paid on the Sp. S. S. Pedro—S. Bonet, master—

of Bilboa, by Wm. Parr & Co., as per American admeasurement; 1,619 tons, amounting to ninety-seven dollars fourteen cents.

The above payment was made on entry from Liverpool on the 16 day of Oct., 1897, being the 3 payment on entry in the year beginning 2 M'ch, 1897.

Schedule of Payments.

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st	2 M'ch, 1897	1,619	6	\$97 14	New Orleans.
2nd.....	5 June, "	1,619	3	48 57	Sabine Pass.
3rd.	16 Oct., "	1,619	6	97 14	Galveston.
4th.					
5th.....					

No naval officer.

P. G. WREN,
D'y Collector.

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EXHIBIT "G" (from Ship's Papers).

Art. 179, customs.

Regulations of 1892. Cat. No. 491.

No. 71133.

Certificate of Payment of Tonnage Duty.

(To be issued in all cases under seals of collector and naval officer.)

U. S. CUSTOM-HOUSE, PORT OF SABINE PASS, TEXAS.

I hereby certify that on the 5th day of June, eighteen hundred and ninety-seven, the tonnage duty of 3 cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, was paid on the Spanish S/S Pedro—S. Bonet, master—of Bilboa, Spain, by R. A. M'Reynolds & Co., as per American admeasurement, 1,619 tons, 48 dollars 57 cents.

The above payment was made on entry from Cienfuegos on the 5th day of June, 1897, being the second payment on entry in the year beginning March 2, 1897.

Schedule of Payments.

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st....	Mar. 2, '97	1,619	6	\$97 14	New Orleans.
2nd.....	June 5, "	1,619	3	48 57	Sabine Pass.
3rd....					
4th.....					
5th.....					

No naval officer.

W. F. M'CLANAHAN,
D'y Collector.

EXHIBIT "H" (from Ship's Papers).

Art. 179, customs.

Regulations 1892.

Cat. No. 491.

No. 71307.

Certificate of Payment of Tonnage Duty.

(To be issued in all cases under seals of collector and naval officer.)

U. S. CUSTOM-HOUSE, PORT OF NEW ORLEANS.

I hereby certify that on this 2nd day of March, eighteen hundred and ninety-seven, the tonnage duty of six cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens of the American merchant marine, and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, was paid on the Span. S/S Pedro—Bonet, master—of Bilboa, by A. K. Miller & Co., as per American admeasurement, 1,619 tons, amounting to ninety-seven dollars and fourteen cents.

The above payment was made on entry from Liverpool, Eng., on the the 2nd day of M'ch, 1897, being the 1st payment on entry in the year beginning M'ch 2nd, 1897.

Schedule of Payments.

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st.....	M'ch 2, '97	1,619	6	\$97 14	New Orleans.
2nd.....					
3rd.....					
4th.....					
5th.....					

F. H. SNYDER,
Naval Officer.

J. D. CRAWFORD,
D'y Collector.

81 District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA
against
 THE STEAMER "PEDRO" AND HER CARGO. } In Prize.

Please take notice upon the proceedings had in this action and upon the annexed affidavit of Wilhelmus Mynderse we shall make application before the Honorable James W. Locke, district judge, in the United States court-rooms, in the city of Jacksonville, Florida, on Tuesday, June 21st, 1898, at three o'clock in the afternoon of that day, that the said steamer "Pedro" be ordered to New York

for sale, and for such other, further, and different relief as in law and justice should be administered.

New York, June 17, 1898.

WILHELMUS MYNDERSE,
Proctor for Claimants.

To Hon. Joseph N. Stripling, United States district attorney ; Edward K. Jones, Esq., special counsel for libellant.

82 District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA }
against
THE STEAMER "PEDRO" AND HER CARGO. }

STATE OF NEW YORK, { ss :
Southern District of New York, {

Wilhelmus Mynderse, being duly sworn, deposes and says that he is one of the proctors for the claimants of the steamer "Pedro" in the above-entitled matter.

Deponent further says that the said steamer "Pedro" has been condemned as prize, and that subsequent to such condemnation proceedings were taken at the instigation of the United States for her appraisal, with the declared purpose on the part of the United States of taking the said vessel for their own use and as their own property.

Deponent further says that said appraisal was concluded on or about the 31st day of May, 1898; but that, as deponent is informed and believes, the said steamer "Pedro" has not been taken by the United States under the said appraisal, nor have the United States complied with the statutory requirements of deposit in connection with taking the vessel.

Deponent further says that the cargo of the "Pedro" has been discharged, and that her officers and crew have left her or are on the point of leaving her for the purpose of returning to Spain, 83 and that the steamer will seriously depreciate and deteriorate if left without a crew to keep her machinery department in order.

Deponent further says the steamer "Pedro" is a large and valuable steamer, and that the most advantageous market for her will be the market of New York.

WILHELMUS MYNDERSE.

Sworn to before me this 17th day of June, 1898.

[SEAL.]

(Endorsed:) "Pedro." Affidavit and notice. Filed this 21 day of June, 1898. E. O. Locke, clerk, by Louis Starke, deputy clerk. Due service of a copy of the within affidavit and notice is hereby admitted this 17th day of June, 1898. Edward K. Jones, special counsel U. S. Gov't in prize cases.

84 District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA
against
 THE STEAMER PEDRO AND HER CARGO. } In Prize.

The claimant of the steamer Pedro above named having applied to this court, upon the proceedings had herein and upon the affidavit of Wilhelmus Mynderse, verified June 17, 1898, for an order directing that said steamer be ordered to New York for sale, now, after hearing Frederick Green in support of said application and Hon. Joseph N. Strippling, United States attorney appearing for the United States, it is—

Ordered that the motion upon said application be denied upon the ground that the United States has elected to take said steamer under appraisal heretofore made.

Jacksonville, Fla., June 22, 1898.

JAMES W. LOCKE, *Judge.*

Filed this 22 day of June, 1898.

E. O. LOCKE, *Clerk,*
 By LOUIS STARKE, *Deputy Clerk.*

85 District Court of the United States, Southern District of Florida. In Admira'ty.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing document of eighty-four numbered pages is a true copy of the record and exhibits in the cause of The United States vs. Spanish Steamer "Pedro," &c., prize, lately adjudicated in said court, and remaining on file in my office.

Seal District Court of the
 United States, South-
 ern District of Florida.

Witness my hand and the seal of said court this ninth day of August, in the year of our Lord one thousand eight hundred and ninety-eight, and of American Independence the one hundred and twenty-third.

EUGENE O. LOCKE, *Clerk.*

86 List of papers filed in this court and forwarded to the Supreme Court of the United States in the case of prize steamer "Pedro."

- #1 to 2. Plans of ship.
- 3 " 11. Certificates of anchors & chains.
- 12. Royal patent.
- 13 " 14. American bills of health.
- 15. Protest.
- 16 " 48. Manifests.
- 49 " 58. Bills of lading,
- 59 " 63. Spanish custom-house papers.
- 74. Spanish letter.
- 75 " 83. Certificates of tonnage duty.
- 84. Crew rool book.
- 85. Log book.
- 86. Reclamacion Rousselon Freres & Co. & b. l.

Respectfully,

[SEAL.]

E. O. LOCKE, *Clerk*,
By J. OTTO, *Dep. Clerk*.

Endorsed on cover: Case No. 16,957. S. Florida D. C. U. S. Term No., 372. The Steamer "Pedro," Sebastian Bonet, claimant, appellant, vs. The United States. Filed August 18th, 1898.